HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 15618 of 2006

Dated ------ August, 2007_____

Between

Mallepaka Yakamma

….Petitioner

and

The Khammam Municipality, rep. by its
Municipal Commissioner, Khammam,
Khammam District, and, ors.

….Respondents.

HONOURABLE SRI JUSTICKE R.SUBHASH REDDY

WRIT PETITION No. 15618 of 2006

ORDER:

In this Writ Petition, the petitioner, who is working as Sweeper in the Khammam Municipality, seeks Writ of Mandamus to direct the respondents to convey and transfer the house site in Plot No. 4, admeasuring 208 square yards, situate in Water Works Employees Colony of Buranpur in Khammam town, in her favour.

The petitioner, who is working as Sweeper, had purchased the house site admeasuring 220 square yards situate in Sweepers Colony of Khammam town, by securing loan from the Khammam Municipality, to construct a dwelling house. Out of the said extent of site, the respondents had taken possession of 160 square yards for the purpose of formation of metal road, without obtaining any consent from the petitioner and without initiating proceedings under the Land Acquisition Act, 1894. When it was represented, the Municipal Council had passed Resolution No. 479 as early as in the year 1991, resolving to allot site in Plot No.4, admeasuring 208 square yards,

situate in Water Works Employees Colony of Buranpur in Khammam town, to the petitioner. As much as the petitioner had lost 166 square yards, and, the plot which was proposed to be allotted to the petitioner is of 208 square yards, the petitioner was asked to pay an amount of Rs.12,600/- towards cost of excess land, as per the Book value. It is stated that the petitioner had also paid the said amount of Rs.12,600/-.

In spite of said resolution passed by the Municipal Council, when there was no move in the matter to convey and transfer the plot in favour of the petitioner, the petitioner, earlier, approached this Court and filed Writ petition No. 18971 of 1994. In the earlier round of litigation, the Municipality admitted the utilization of the part of the site of the petitioner for public purpose, namely, for formation of metal road under the E.I scheme and also the resolution passed by the Municipal Council for conveying the site in Plot No.4, admeasuring 208 square yards, situate in Water Works Employees Colony of Buranpur in Khammam town. But however, when it was pleaded that the matter is pending consideration for approval of the Government, this Court by order dated 13-9-2004, directed the Government to pass appropriate orders within a period of three weeks from the date of the said order to enable the Municipal Council to hand over the said plot to the petitioner. Even thereafter, for a considerable period the respondents have not taken any action, and, hence, the petitioner has filed this Writ Petition.

Counter affidavits are filed on behalf of the first respondent-Municipality as well as third respondent-Government.

In the counter affidavit filed on behalf of the first respondent-Municipality, it is admitted that an extent of 124 square yards of land of the petitioner was taken possession for utilizing the same for formation

of metal road and the Municipal Council had passed resolution to convey and transfer the land in plot No. 4, admeasuring 208 square yards, situate in Water Works Employees Colony of Buranpur in Khammam town in favour of the petitioner. It is also admitted that an amount of Rs.12,600/- towards the cost of excess land, at the rate of Rs.150/- per square yard, as per the market value fixed by the Sub Registrar, Khammam, was collected from the petitioner. It is stated in the counter affidavit that after the orders dated 13-9-2004 were passed by this Court in Writ Petition No. 18971 of 1994, there was much correspondence between the Municipality, District Collector and the Government, but however, the Government vide Memo No. 7204/J1/2005-4, dated 29-7-2006, directed the first respondent-Municipality to take steps for payment of compensation to the petitioner for the land which was acquired for formation of metal road. It is stated that, in view of the said orders of the Government, steps are being taken for payment of compensation to the petitioner.

In the counter affidavit filed by the third respondent-Government, it is stated that after the orders were passed by this Court on 13-9-2004 in Writ Petitioner No. 18971 of 1994, the first respondent-Municipality was addressed for information by the Director of Town and Country Planning, Andhra Pradesh, and the Commissioner & Director of Municipal Administration, Andhra Pradesh. It is stated that the Director of Town and Country Planning, had submitted his remarks, in which, he had referred to the Government Memo No.1403/M1/2001-4.MA, dated 10-5-2001, wherein a decision had been taken by the Government and communicated to all the Heads of the Departments, disapproving the policy of exchange of land for land as compensation, and, as such, it is stated that in view of the said instructions, orders were issued by the Government in Memo No.7204/J1/2005-4, dated 29-7-2006 directing the Municipality to take appropriate steps for

payment of compensation to the petitioner.

Heard Sri P.Bala Krishna Murthy, learned Counsel appearing for the petitioner, Sri Polisetty Radhakrishna, learned Standing Counsel appearing for the first respondent-Municipality, and, learned Government Pleader for Municipal Administration, appearing for the third respondent.

The first respondent is a notified Municipality and statutory body constituted under the A.P. Municipalities Act, 1965. So far as acquisition and transfer of immovable properties by the Municipal Councils is concerned, the same is governed by rules, titled as, Acquisition and Transfer of Immovable Properties Rules, 1967, framed in exercise of powers conferred under Clause (c) of the Sub-Section (2) of Section 326 of the A.P. Municipalities Act, 1965. From a reading of the said Rules coupled with the provision under Section 174 of the AP Municipalities Act, 1965, it is clear that the municipality has power to acquire land for public purpose, namely, formation of roads, developing streets etc., only by initiating proceedings under the Land Acquisition Act, 1894. But, however, in the instant case, the land of the petitioner to an extent of 124 square yards was taken possession without obtaining any consent from her and without initiating proceedings under the Land Acquisition Act, 1894. Though possession was taken as early as in the year 1990, and, resolution was passed by the Municipal Council, no action is taken for number of years. Further, this Court by order dated 13-9-2004 in Writ Petition No. 18971 of 1994 directed the Government to pass orders to enable the Municipality to convey the house site in favour of the petitioner. Even thereafter, no action has been taken. Now, ultimately, at this point of time, it is stated that the Government had refused to issue sanction orders to the Municipality for conveying the said piece of land to the

petitioner only on the ground that there is no policy of exchange of land for the land as compensation. But, however, it is to be noted that in the earlier orders of this Court dated 13-9-2004, directions were issued to the Government to pass appropriate orders to enable the Municipality for transfer of the said house site. The policy that there is no exchange of land for the land as compensation may apply to the cases where the property was acquired by due process of law by the municipalities. But, in the instant case, the petitioner, herself, had purchased the house site admeasuring 220 square yards situate in Sweepers Colony of Khammam town to construct a dwelling house, by securing loan from the Municipality, and, out of the said piece of land, major portion of the land was taken possession by the Municipality for public purpose, namely, formation of metal road, without obtaining consent from the petitioner and without initiating any proceedings under the Land Acquisition Act, 1894. The said action itself is in gross violation of the constitutional rights guaranteed to the petitioner under Article 300-A of the Constitution of India.

Further, though possession was taken as early as in the year 1990, so far the petitioner was not compensated as per the Resolution of the first respondent-Municipal Council, by transferring the proposed house site in Plot No.4, admeasuring 208 square yards, situate in Water Works Employees Colony of Buranpur in Khammam town. In spite of the positive directions issued by this Court in Writ petition No. 18971 of 1994 in the order dated 13-9-2004 to the Government to pass appropriate orders to enable the Municipality to convey the said house site to the petitioner, it is not open for the third respondent-Government in refusing to issue sanction orders on the ground that there is no such policy. Not only major portion of the land of the petitioner was acquired, but also, an amount of Rs.12,600/- was collected from the petitioner towards cost of the excess land, as per the existing market

value, at the relevant time. The action of the respondents and abnormal delay on their part in conveying the house site, which was agreed to be transferred to the petitioner, is highly illegal and arbitrary. Having taken possession of the land of the petitioner for public purpose, and, having collected the amount towards excess land from the petitioner at the relevant point of time as per the Book Value and in spite of the orders of this Court dated 13-9-2004 in Writ Petition 18971 of 1994, which became final, it is not open for the respondents to deprive the petitioner of the proposed house site, on the ground that there is no such policy in force. Normally, this Court is slow in issuing positive directions for transfer of the land in such situations. However, in the instant case, in spite of specific orders of this Court dated 13-9-2004 in Writ Petition No. 18971 of 1994, not only abnormal delay is caused, but also, Government refused to grant sanction orders to the municipality for transfer of the proposed house site to the petitioner on irrelevant and unacceptable grounds. The third respondent-Government had passed order in Memo No.72-4/J1/2005-4, dated 29-7-2006 in routine and mechanical manner, basing on the remarks of the Director of Town and Country Planning.

For the foregoing reasons, I allow the Writ Petition with a direction to the third respondent-Government to issue sanction orders to the first respondent-Municipality for the transfer of the land in Plot No.4, admeasuring 208 square yards, situate in Water Works Employees Colony of Buranpur in Khammam town, in favour of the petitioner, within a period of two months from the date of receipt of this order. Thereafter, the first respondent-Municipality shall transfer the said plot in favour of the petitioner, within a period of six weeks from the date of receipt of the sanction orders from the Government, by executing the necessary registered sale deed, with its own cost towards stamp duty and registration charges. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: ----August, 2007.
Msnr.